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6 TEJINDAR P. SINGH & RAJINDER K. SINGH,
THE SINGH FAMILY PROPERTIES, L.P.

7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9
10 TEJINDAR P. SINGH &
RAJINDER K. SINGH, THE SINGH
11 FAMILY PROPERTIES, L.P.

CASE NO.: 3:19-cv-05758-LB
SUPERIOR CRT CASE NO.: C19-01235
DATE ACTION FILED: June 27, 2019

12 Plaintiff,

Assigned for ALL Purposes to
Hon. Laurel Beeler
Courtroom: B

13 v.

**OPPOSITION TO MOTION BY
DEFENDANT SPECIALIZED LOAN
SERVICING LLC AND INDYMAC BANK,
F.S.B TO DISMISS PLAINTIFFS'
COMPLAINT**

14
15 INDYMAC BANK, F.S.B.,
SPECIALIZED LOAN SERVICING,
LLC, AFFINIA DEFAULT SERVICES,
LLC and DOES 1 to 20, ALL
16 UNKNOWN PERSONS WHO CLAIM
UNKNOWN PERSONS WHO CLAIM
CURRENT RIGHT TO DEBT SECURED
BY SECOND TRUST DEED WHICH
17 CLOUDS TITLE TO 4272 GLAZIER
COURT, CONCORD, CA 94521,
18
19

DATE: November 14, 2019
TIME: 9:30 AM
PLACE: B

Defendants.

TRIAL DATE: Not Set.

TABLE OF AUTHORITIESHeadings

SUMMARY

2

NON JUDICIAL FORECLOSURE BY SLS, DESPITE SLS, INDYMAC

ANSWERS FILED IN PLAINTIFFS 2015 LAWSUIT CHALLENGING

INDYMAC DEED OF TRUST

5

PRIOR LITIGATION BARS CURRENT NON JUDICIAL FORECLOSURE

BY SLS

7

THERE IS NO LAW THAT A DEBT CAN BE UNENFORCEABLE IN A

COURT OF LAW BUT CAN YET BE NON JUDICIALLY ENFORCED

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ESTOPPEL TO DENY HOLDER OF DEED OF TRUST WAS INDYMAC, A

DEFENDANT IN PLAINTIFFS' 2015 LAWSUIT

11

CodesCode of Civil Procedure 426.30 (d)

2

Code of Civil Procedure 426.30 (b)

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Civil Code 2903

8, 10

Civil Code 2905

8, 10

Civil Code 2911

8

Civil Code 1511

9, 10

Civil Code 1512

9, 10

Civil Code 1515

9

Code of Civil Procedure 525

9

1	<u>Code of Civil Procedure</u>	526	3, 9
2	<u>Code of Civil Procedure</u>	527	9
3	<u>Civil Code Sections</u>	3384-3395	9
4	<u>Civil Code</u>	3422 Sections 1-4	9
5	<u>Code of Civil Procedure</u>	1060	3, 9
6	<u>Code of Civil Procedure</u>	426.30	11
7	<u>Cases</u>		
8	<u>Align Technology, Inc. v. Bao Tran</u> (2009)		
9	179 Cal App 4 th	949,	8
10	<u>Birman v. Loeb</u> (1998) 64 Cal App 4 th 503		
11	<u>Ortiz v. Accredited Home Lenders, Inc</u> (2009)		
12	639 F. Supp.	1159 (SD Cal 2009)	11
13	<u>Cosentino v. Coastal Construction Co</u> (1994)		
14	30 Cal App 4th	1712	11
15	<u>Gostin v. State Farm Insurance Co</u> (1964)		
16	22 Cal app 2 nd	319, p. 325	13
17	<u>First American title Co V. Warehouse Lending Corporation</u>		
18	(2009) 177 Cal App 106, page 117		13
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1 Defendants INDYMAC BANK and SPECIALIZED LOAN SERVICING LLC
2 Move to Dismiss the Complaint of the SINGH plaintiffs.
3

4 SUMMARY: Did Defendant SPECIALIZED LOAN SERVICING LLC,
5 ("SLS") have to file a compulsory cross complaint when both SLS
6 and INDYMAC filed ANSWERS to the SINGHS' 2015 Declaratory Relief
7 and Quiet Title Complaint? As alleged in the SINGHS' 2015
8 Complaint, their tender of payment coupled with the inability of
9 INDYMAC to re convey the disputed Deed of Trust, is the
10 equivalent of full payment (although the INDYMAC Deed of Trust
11 remains a cloud on title against the SINGHS' property).
12

13 There are *many reasons* why Defendant SLS is now barred from
14 non-judicial foreclosure, relating to the fact that the SINGH
15 plaintiffs had a right to pay off whatever loan was secured and
16 obtain a re conveyance of the INDYMAC Deed of Trust, and did
17 everything they could to tender payment and clear title to their
18 property.

19 Defendant SLS cites inapplicable authority, for its
20 semantic argument that a non judicial foreclosure is not an
21 "action" as defined in Cal. Code of Civil Procedure 426.30 (d),
22 Defendant SLS' main argument, that court action may be barred,
23 but non judicial foreclosure can proceed, is not supported by
24 any case Defendants cite.
25

1 Defendant also argues that there is no cause of action for
 2 "injunction" or "declaratory relief" but there is ample black
 3 letter authority that supports causes of action based only on
 4 the need for injunctive relief, i. e. Code of Civil Procedure
 5 526, or declaratory relief, Code of Civil Procedure 1060,
 6 discussed below.

7 Defendant SLS also argues a non-issue, *as if the SINGH*
 8 *plaintiffs are challenging an assignment.* Not so.

9 Plaintiffs' current lawsuit is based on the estoppel of the
 10 Defendants who filed Answers to Plaintiffs' 2015 Quiet Title and
 11 Declaratory Relief. Plaintiffs exhausted all possible avenues of
 12 tender of payment but Defendants could not re convey the INDYMAC
 13 Deed of Trust. Defendant SLS Answered the SINGHS' 2015 Complaint
 14 without filing any compulsory cross complaint, but now had
 15 commenced non judicial foreclosure as if nothing happened.

16 Defendant INDYMAC had not assigned the offending Deed of
 17 Trust, and filed an ANSWER to the SINGHS' 2015 Complaint,
 18 without filing any cross complaint, yet *could not tender re*
 19 *conveyance of the INDYMAC Deed of Trust.* Defendant INDYMAC only
 20 assigned the Deed of Trust to Deutsche Bank after Plaintiffs
 21 dismissed their futile 2015 Complaint.

22 The SINGH plaintiffs had to dismiss their 2015 Complaint
 23 because their lawsuit could not clear title of the INDYMAC Deed
 24 of Trust, as admitted by the Answering Defendants.

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1 After Plaintiffs' dismissed their 2015 Complaint, Defendant
2 INDYMAC, as beneficiary of the unassigned Deed of Trust moved,
3 unsuccessfully, for attorneys' fees based on that instrument.

4 Thus INDYMAC admitted that it was the only assignee and
5 beneficiary of the INDYMAC Deed of Trust. INDYMAC'S post
6 dismissal motion for attorneys' fees was denied, based on the
7 undisputed Declaration of Rajinder SINGH. Neither INDYMAC nor
8 SLS could re convey the INDYMAC Deed of Trust upon Plaintiffs
9 tender of payment.

10 Because the secured loan was no recourse, and was only
11 enforceable against the security, the SINGHS' 2015 Complaint had
12 no other reason than to obtain conveyance of the INDYMAC Deed of
13 Trust.

14 Throughout Plaintiffs' vain 2015 lawsuit, Defendant SLS
15 demanded payment of the loan but admittedly would not tender
16 clear title in exchange. Defendant SLS litigated fiercely and
17 ruinously despite neither Defendant having any ability to re
18 convey the INDYMAC Deed of Trust in exchange for payment by the
19 SINGHS.

20 After the Plaintiff's dismissed their 2015 Complaint
21 without prejudice, in April of 2017, and INDYMAC'S Motion or
22 Attorneys' fees was denied, Defendant SLS recorded a *Notice of*
23 **Default on February 26, 2019**, the first step in a non-judicial
24 foreclosure.

1 NON JUDICIAL FORECLOSURE BY SLS, PLAINTIFFS 2015 LAWSUIT
2 CHALLENGING INDYMAC DEED OF TRUST

3 When they were in contract to sell the property in April of
4 2015, the SINGHS discovered a previously unknown lien against
5 GLAZIER Ct. It had the earmarks of a previous embezzlement by a
6 real estate agent/partner who referred a bookkeeper to them,
7 and, with further aid of an escrow agent, had stolen \$200,000.

8 The SINGHS sought pay off demands from INDYMAC, the only
9 discernable holder of the otherwise unassigned Deed of Trust.

10 The SINGHS lawyer made numerous requests for PAY OFF
11 demands, from May through July of 2015, directed to every
12 possible address of INDYMAC, the of record beneficiary of the
13 INDYMAC Deed of Trust.

14 In frustration, the SINGHS filed **their 2015 Complaint for**
15 **Quiet Title and Declaratory Relief on August 6, 2015.**

16 When the SINGHS obtained a copy of the INDYMAC Deed of
17 Trust, they saw that their initials were forged, and the
18 property address on the instrument was crudely altered from
19 GLAZIER to "**Galcier Ct**".

20 Discovery later revealed that the billing address for the
21 purported credit line was to one of *their gas stations*, in
22 Dublin rather than to their central billing address, which they
23 used for all of their 6 other gas stations and 11 income
24 properties.

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1 Discovery in their 2015 lawsuit disclosed that the INDYMAC
2 "Galcier Ct" credit line had been frozen in 2008 and the last
3 payment made in 2011.

4 The SINGHS had never been aware of the credit line, which
5 was easily confused with their INDYMAC/One West credit line for
6 *the same amount*, with a similar date, also in second lien
7 position against their home in Danville. They were convinced
8 that if a loan had been obtained it was by embezzlement and that
9 it had been deliberately concealed.

10 Nevertheless the SINGH'S only goal of their 2015
11 Declaratory Relief and Quiet Title was *to locate whatever party*
12 *could re convey the INDYMAC Deed of Trust so that they could pay*
13 *it, and sell GLAZIER CT.*

14 SPECIALIZED LOAN SERVICING LLC and INDYMAC FSB ultimately
15 filed ANSWERS to the SINGHS' 2015 Complaint, but ***neither filed***
16 ***any Cross Complaints.***

17 But, as the SINGHS' now allege, neither of the Answering
18 Defendants, INDYMAC nor SLS, *would re convey the INDYMAC Deed of*
19 *Trust.* The loan in question was a "no recourse" loan, so
20 quieting title was their sole concern, and they had no means to
21 litigate with SLS if they could not remove the cloud on their
22 title to GLAZIER CT.

23 Therefore, the SINGHS dismissed their 2015 Complaint in
24 April of 2017, *without prejudice.*

25

1 On May 5, 2017 Defendant INDYMAC filed a post dismissal
2 *motion for attorneys' fees.* Thus, the party with rights under
3 the Deed of Trust was admitted to be INDYMAC.

4 On May 26, 2017, Plaintiff RAJINDER SINGH filed her
5 *unrebutted Declaration in Opposition* [Exhibit 5 to Complaint].
6 SINGH Declared that they dismissed because neither Defendant
7 would or could tender the re conveyance of the INDYMAC Deed of
8 Trust

9 Defendant INDYMAC did not dispute her declaration that
10 neither Defendant, SLS or INDYMAC, could re convey the GLAZIER
11 Ct Deed of Trust. The post dismissal INDYMAC motion for
12 attorneys' fees was denied.

13

14 PRIOR LITIGATION BARS CURRENT NON JUDICIAL FORECLOSURE BY
15 SLS

16 SLS' rights to non-judicially enforce the GLAZIER Ct credit
17 line are **forfeited by the failure of both INDYMAC and SLS to**
18 **file compulsory cross complaints in the prior litigation, which**
19 **alleged that redemption of the Glazier Ct lien was prevented by**
20 **the creditor.**

21 Code of Civil Procedure 426.30 (b), if a party against whom
22 **a complaint has been filed and served fails to allege in a cross**
23 **complaint any related cause of action which (at the time of**
24 **serving his answer to the complaint) he has against the**

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1 plaintiff, such party may not thereafter OR in any other action
 2 assert against the plaintiff the related cause of action not
 3 pleaded. Align Technology, Inc. v. Bao Tran (2009) 179 Cal App
 4th 949, at 959:

5 "Thus a party cannot by negligence or design, withhold
 6 issues and litigate them in successive actions; he may not split
 7 his demands or defenses, he may not submit his case in piece
 8 meal fashion."

9 A non judicial enforcement obviously requires a legally
 10 enforceable debt.

11 A secured lender cannot non judicially enforce a debt that
 12 has been repaid, or is long defunct due to the expiration of the
 13 statute of limitations, or, barred by the same Answering
 14 Defendant's failure to file a compulsory cross complaint.

15 In addition, creditors must make redemption of the deed of
 16 trust possible, and they did not. In such a case the debtors'
 17 offer of payment is considered as if payment were made.

18 See Civil Code 2903, every owner of property has the right
 19 to redeem a lien, and Civil Code 2905:

20 "Redemption from a lien is made by performing, or offering
 21 to perform, the act for the performance of which it is a
 22 security"

23 Civil Code 2911 mandates that lien is extinguished by the
 24 lapse of time within which, under the Code of Civil Procedure

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1 (limitations periods) an action can be brought upon the
2 principal obligation.

3 The SINGHS' 2015 Complaint sought to quiet title as to the
4 very Deed of Trust which SLS would now non judicially enforce.
5 So their time to enforce has expired.

6 Plaintiff's 2015 Complaint specifically pled: Civil Code
7 1511, and 1512, and Civil Code 1515:

8 "If performance of an obligation be prevented by the
9 creditor the debtor is entitled to all of the benefits which he
10 would have obtained if it had been performed by both parties...".

11 Under these facts Declaratory Relief and Injunction are
12 both Causes of Action, not mere remedies improperly pled as
13 causes of actions by Plaintiffs.

14 See Code of Civil Procedure 525, and 526: the issuance of a
15 preliminary injunction can be granted based on a verified
16 complaint (Code of Civil Procedure 527).

17 Civil Code sections 3384 – 3395, and Civil Code 3422
18 sections 1-4 provide that *final injunction* may be granted to
19 prevent the breach of an obligation where the restraint would be
20 necessary to prevent a multiplicity of actions.

21 Likewise, Declaratory Relief is a cause of action:

22 Code of Civil Procedure 1060 allows for Declaratory Relief
23 To Ascertain Status or Construe Writing:

24

25

1 "Any person interested under a written instrument,
 2 excluding a will or a trust, or under a contract, or who desires
 3 a declaration of his or her rights or duties with respect to
 4 another... may, bring an original action or cross-complaint in the
 5 superior court for a declaration of his or her rights and duties
 6 in the premises, including a determination of *any question of*
 7 *construction or validity arising under the instrument or*
 8 *contract*".

9 As the SINGHS alleged in their verified 2015 Complaint:

10 "*Plaintiffs are unable to redeem or obtain conveyance or*
 11 *any demand, and thus suffer and continue to suffer clouded and*
 12 *unmarketable and uninsurable title*" (paragraph 5 and 6 of August
 13 6, 2015 Complaint).

14 The SINGHS' 2015 Complaint truthfully alleged their
 15 undisputed *tender of full payment under Civil Code 1511 and*
 16 *1512, without creditor tender of re conveyance of the INDYMAC*
 17 *Deed of Trust, as Plaintiffs' alleged: "in derogation of*
 18 *plaintiff's right to redeem under Civil Code 2903, and*
 19 *Plaintiffs allege that they have offered and tendered under*
 20 *Civil Code 2905".*

21

22 THERE IS NO LAW THAT A DEBT CAN BE UNENFORCEABLE IN A COURT
 23 OF LAW BUT CAN YET BE NON JUDICIALLY ENFORCED

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1 Defendant does not cite any case which holds that non
2 judicial foreclosure "does not qualify for an 'action' within
3 the meaning of Code of Civil Procedure 426.30".

4 The principal case cited by Defendants, Birman v. Loeb
5 (1998) 64 Cal App 4th 503 does not have anything to do with
6 failure to file a compulsory cross complaint, but with equitable
7 use of "set offs". Ortiz v. Accredited Home Lenders, Inc (2009)
8 639 F. Supp. 1159 (SD Cal 2009) likewise never mentions
9 compulsory cross complaints but whether offsets which are barred
10 by statute of limitations can be later asserted defensively to
11 the creditor's claim. Cosentino v. Coastal Construction Co
12 (1994) 30 Cal App 4th 1712 only holds that California Probate
13 Code Section 9391 "does not apply to private non-judicial
14 foreclosures brought under a power of sale to enforce a debt"

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16 ESTOPPEL TO DENY HOLDER OF DEED OF TRUST WAS INDYMAC, A
17 DEFENDANT IN PLAINTIFFS' 2015 LAWSUIT

18 As alleged in Plaintiffs' current Complaint, the attorney
19 for INDYMAC and SLS, Tim Ryan, wrote to Plaintiffs attorney, on
20 April 19, 2017. Ryan misrepresented that SLS would re convey:

21 *"We represent both the servicer and the note holder...our
22 client will re convey its lien in exchange for full payment of
23 the loan in question..."*

24

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1 "As to your claim that our office is appearing in this
2 litigation for the servicer only, I would ask that you review
3 our clients' Answer filed in this case. The Answer provides that
4 **we represent both the servicer and the note holder..."**

5 On May 3, 2016 Ryan again reiterated: "...SLS will most
6 certainly re convey the deed of trust at issue upon payment of
7 the amount due and owing as set forth in our April 10, 2016
8 response to payoff request...."

9 "**Again, our client will release the lien upon Ms. Singh's
10 payment of the amount set forth in our April 10, 2016 response
11 to pay off demand...**"

12 But ultimately, no corresponding tender of a re conveyance
13 was ever forthcoming from INDYMAC or SLS. INDYMAC had assigned
14 the Note to Deutsche Bank in 2005—but INDYMAC'S 2005 assignment
15 was **not recorded until 2018.**

16 See the **unrebutted** DECLARATION OF RAJINDER SINGH [Exhibit
17 5, filed May 26, 2017]:

18 "*... no Answering party would or could re convey the cloud on
19 our title, whether we paid a demand or not...*"

20 Defendant SLS yet argues that its non-judicial foreclosure
21 can nevertheless proceed, even if the underlying note is
22 unenforceable in a court of law.

23 **But, a right to enforce, judicially or non-judicially
24 depends upon a valid and enforceable debt.**

1 Please see Gostin v. State Farm Insurance Co (1964) 22 Cal
 2 app 2nd 319, p. 325: "An enforceable lien is dependent upon an
 3 existing obligation". First American title Co V. Warehouse
 4 Lending Corporation (2009) 177 Cal App 106, page 117. Any SINGH
 5 obligation on the purported 2005 Credit line secured by the
 6 INDYMAC Deed of Trust is barred.

7 The SINGHS' vain tender of payment is considered payment
 8 made, as a matter of law, and either INDYMAC or SLS could have
 9 and should have litigated the debt in the 2015 case.

10 There is no existing obligation upon which an enforceable
 11 lien can depend, so belated non-judicial foreclosure is not
 12 lawful and is barred and must be enforced and the proper
 13 declaratory and injunctive relief afforded.

14 Only after the Plaintiffs dismissed their futile 2015
 15 Complaint, did INDYMAC assign the Deed of Trust (Exhibit 7 to
 16 SINGH current Complaint).

17 If a holder of an instrument loses the rights to foreclose,
 18 such as by a participation in a lawsuit without filing a cross
 19 complaint required by law, the subsequent transfer of those
 20 rights to a third party does not revive the lost right.

DATED: October 21, 2019

LAW OFFICES OF GOFORTH & LUCAS

CHRISTOPHER R. LUCAS

Attorney for Plaintiffs SINGH
TEJINDAR P. SINGH & RAJINDER K.
SINGH, THE SINGH FAMILY
PROPERTIES, L.P.

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OPPOSITION TO MOTION BY DEFENDANT SPECIALIZED LOAN SERVICING LLC AND
INDYMAC BANK, F.S.B TO DISMISS PLAINTIFFS' COMPLAINT

PROOF OF SERVICE

I, declare that I am employed in the County of Contra Costa, State of California. I am over the age of eighteen years and not a party to the within cause; my business address is 2001 Salvio Street, Suite 25, Concord, California 94520. Upon this day, I served the attached;

**OPPOSITION TO MOTION BY DEFENDANT SPECIALIZED LOAN SERVICING LLC AND INDYMAC BANK, F.S.B TO DISMISS PLAINTIFFS' COMPLAINT
ON:**

Timothy M. Ryan, Esq.
Michael W. Stoltzman, Esq.
THE RYAN FIRM
30 Corporate Park, Suite 310
Irvine, CA 92606

[X] VIA MAIL - CCP §§ 1013(a), 2015.5:

By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Concord, California, with postage thereon fully prepaid, that same day in the ordinary course of business.

[] VIA OVERNIGHT MAIL/COURIER - CCP §§ 1013(c), 2015.5:

By placing a true copy enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service or overnight courier service. I am readily familiar with my firm's business practice of collection and processing of correspondence for overnight mail or overnight courier service, and any correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.

[] VIA FACSIMILE - CCP §§ 1013(e), 2015.5, CRC 2008:

By arranging for facsimile transmission from facsimile number (925) 682-2353 to the above listed facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error, and a copy of the transmission report is attached.

[] VIA HAND DELIVERY - CCP §§ 1011, 2015.5:

By placing a true copy thereof in a sealed envelope(s), addressed as above, and causing each envelope(s) to be hand-served on that day, in the ordinary course of my firm's business practice.

[] VIA ELECTRONIC MAIL - CCP §§ 1013, 1010.6:

By serving, by electronic mail, true and correct copies of the documents on counsel of record after agreement for service in such a manner Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 21, 2019, at Concord, California.

cc: Client


S. Acosta